

10:34 am, Mar 05, 2020

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS GESUALDI, LOUIS BISIGNANO,
MICHAEL O'TOOLE, MICHAEL BOURGAL,
FRANK H. FINKEL, MARC HERBST,
JOSEPH A. FERRARA, SR., DENISE
RICHARDSON, THOMAS F. CORBETT and
ANTHONY D'AQUILA, as Trustees and
Fiduciaries of the Local 282 Welfare Trust Fund,
the Local 282 Pension Trust Fund, the Local 282
Annuity Trust Fund, the Local 282 Job Training
Trust Fund, and the Local 282 Vacation and Sick
Leave Trust Fund,

Plaintiffs,

-against-

INTERSTATE FIRE PROTECTION, INC. and
INTERSTATE MECHANICAL SERVICES,
INC.,

Defendants.

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APPEARANCES:

Trivella & Forte, LLP

Attorneys for the Plaintiffs

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White Plains, NY 10605

By: Arthur Joseph Miller, Esq.,
Christopher A. Smith, Esq.,
Gina Elyse Nicotera, Esq., Of Counsel.

Daniels, Porco and Lusardi, LLP

Attorneys for the Plaintiffs

102 Gleneida Avenue

Carmel, NY 10512

By: Jonathan Michael Baravid, Esq., Of Counsel.

SPATT, District Judge:

On August 31, 2015, the Plaintiffs commenced this action against Interstate Mechanical Services, Inc. ("IMS") and Interstate Fire Protection, Inc. ("IFP" and collectively, the

“Defendants”) to recover monetary and injunctive relief under §§ 502(a)(3) and 515 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §§ 1132(a)(3) and 1145. ECF 1.

On October 27, 2015, after Defendant IFP failed to answer or otherwise respond, the Plaintiffs requested a certificate of default against IFP. ECF 12. On October 28, 2015, the Clerk of the Court issued a Certificate of Default, pursuant to Federal Rule of Civil Procedure (“FED. R. CIV. P.”) 55(a). ECF 13.

On December 7, 2017, the Plaintiff moved for a default judgment against IFP. EC 44. The Court referred the motion to United States Magistrate Judge Arlene R. Lindsay for a Report and Recommendation as to whether the motion for a default judgment should be granted, and if so, whether damages should be awarded. ECF 53.

On May 7, 2018, Judge Lindsay issued a Report and Recommendation denying the motion without prejudice to renewal after the parties finalized a settlement agreement. ECF 57. The Court adopted that order on May 30, 2018. ECF 61.

The parties stipulated to IMS’s dismissal from the action in July 2018. ECF 67. The Plaintiffs also renewed their default judgment motion against IFP on November 30, 2018. ECF 68. They also asked for attorneys’ fees and costs. *Id.*; ECF 71. The Court referred that matter to Judge Lindsay for a Report and Recommendation as to whether the motion for a default judgment should be granted, and if so, what relief should be awarded. ECF 73.

Judge Lindsay issued a Report and Recommendation on May 23, 2019, in which she recommended that (1) a default judgment be entered ordering IFP to permit and cooperate in an audit of its books and records; and (2) that the award of attorneys’ fees and costs be denied, with

leave to renew consistent with the guidelines set forth in the Report and Recommendation. ECF 74. The Court adopted the Report and Recommendation on June 11, 2019. ECF 76.

In accordance with the Report and Recommendation, the Plaintiffs submitted a revised fee application to Judge Lindsay, seeking a judgment of \$4,251.15, consisting of \$3,626.75 in fees and \$624.00 in costs. ECF 78. On January 15, 2020, Judge Lindsay issued a Report and Recommendation (“R&R”), recommending that the Plaintiffs be awarded the \$4,251.15 in attorneys’ fees and costs. ECF 81. The Plaintiffs filed proof of service for the R&R on January 16, 2020. ECF 81.

It has been more than fourteen days since the service of the R&R. The parties have not filed objections. As such, pursuant to 28 U.S.C. § 636(b) and FED. R. CIV. P. 72, this Court has reviewed the R&R for clear error, and, finding none, now concurs in both its reasoning and its result. *See Coburn v. P.N. Fin.*, No. 13-CV-1006 (ADS) (SIL), 2015 WL 520346 at *1 (reviewing R&R without objections for clear error).

Accordingly, the R&R is adopted in its entirety. Pursuant to the R&R, the Plaintiffs are awarded \$4,251.15, consisting of \$3,626.75 in fees and \$624 in costs.

The Clerk of the Court is directed to close the case.

SO ORDERED.

Dated: Central Islip, New York

March 5, 2020

/s/ Arthur D. Spatt

ARTHUR D. SPATT

United States District Judge